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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,189	05/14/2001	Raymond Jeffrey May	KCC-14,833	8200

35844 7590 03/05/2003

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EXAMINER

COLE, ELIZABETH M

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/855,189

Applicant(s)

MAY ET AL.

Examiner

Elizabeth M Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. The information disclosure statement filed 12/20/02 fails to comply with 37 CFR 1.97© because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.
2. The information disclosure statement filed 12/20/02 fails to comply with 37 CFR 1.97© because it lacks the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered.
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-24, 49-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Melbye et al in view of Mleziva et al and further in view of Suzuki et al, U.S. Patent

No. 4,687,477

Melbye et al discloses an elastic material comprising a plurality of extruded continuous, elastomeric strands which are bonded to a facing layer. The strands may either be placed in greater quantity in certain regions and/or thicker and thinner strands may be employed, in order to produce an elastic material having different zones of elasticity. See page 4, line 21- page 5, line 3. The material may be made by the claimed method. See pages 13-21. Melbye et al differs from the claimed invention because Melbye et al does not disclose the values of the first and second basis weights, the first and second average thicknesses, the first and second frequency, does not

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disclose employing an adhesive to bond the facing layer and the filaments. Mleziva et al teaches that continuous elastic fibers can be formed and cast onto a foraminous belt for cooling and collecting, see col. 13, lines 17-20, and then adhesively bonded to facing layers. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the elastic fibers and adhesively bonded the fibers to the facing layers because Mleziva et al teaches that this was an alternative method to extruding the strands onto the facing layer and autogeneously bonding the layers and the strands. With regard to the basis weight, thickness, and frequency, since Melbye et al teaches that it is known to vary the number of strands in an area and/or the diameter of the strands in order to control and vary the elasticity of various regions of the laminate, Melbye et al teaches that the variables are result effective variables. Therefore, it would have been obvious to have optimized the number and diameter of the strands in order to form a fabric having the desired elasticity through the process of routine experimentation.

Neither Melbye et al nor Mleziva et al teaches including a barrier layer. Suzuki et al teaches at col. 8, lines 22-28, that a diaper material to which a plurality of elastic strands is bonded may comprise a first layer of a nonwoven material and a second layer of a plastic film. The plastic film would correspond to the claimed barrier layer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the diaper material set forth by Suzuki et al as one of the facing layers in Melbye et al. One of ordinary skill in the art would have been motivated to employ the Suzuki material because it would enhance the

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liquid retaining qualities of the diaper and because Suzuki teaches that such composite materials were conventionally used.

5. Claims 25-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Melbye in view of Mleziva and Suzuki as applied to claims 1-24 and 49-60 above, and further in view of Gore, 4,239,578. Neither Melbye nor Mleziva teach differentially stretching the elastic filaments. Gore teaches that elastic strips which are adhesively secured to a diaper material can be stretched to different degrees in order to form a diaper material having different degrees of stretchability. See col. 5, lines 25-36. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have stretched the filaments of Mleziva to different degrees. One of ordinary skill in the art would have been motivated to stretch the filaments of Mleziva to different degrees in order to form a diaper having different elasticity in different areas, as taught by Gore. Thus, the waist portion of the garment would have a less snug fit than the thigh portion of the garment if the elastic fibers in the waist portion were applied in a more relaxed, less stretched state than those in the thigh portion of the diaper.

6. Applicant's arguments with respect to claims 1-60 have been considered but are moot in view of the new ground(s) of rejection.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.



Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c

March 3, 2003